

FILED WITH REDACTIONS PURSUANT
TO DOCKET NO. 78 AND MICROSOFT'S
CONFIDENTIALTY DESIGNATIONS

EXHIBIT A

C. MULLANEY-SUNDLIE CONFIDENTIAL; August 29, 2007

Page 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DIANNE L. KELLEY and KENNETH
HANSEN,

Plaintiffs,

vs.

MICROSOFT CORPORATION, a
Washington corporation,

Defendant.

No. C070475 MJP

VIDEOTAPED 30(b)(6) DEPOSITION UPON ORAL EXAMINATION OF
MICROSOFT CORPORATION
CHRISTINE MULLANEY SUNDLIE
(CONTAINS CONFIDENTIAL TESTIMONY
SUBJECT TO PROTECTIVE ORDER)

1:52 P.M.

AUGUST 29, 2007

1001 FOURTH AVENUE, SUITE 4000

SEATTLE, WASHINGTON

REPORTED BY: JULIE R. HEAD, CRR, RPR, CCR No. 3119

C. MULLANEY-SUNDLIE CONFIDENTIAL; August 29, 2007

<p style="text-align: right;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1</p> <p>2</p> <p>3 FOR THE PLAINTIFFS:</p> <p>4 WILLIAM C. SMART</p> <p>5 IAN S. BIRK</p> <p>6 Keller Rohrback LLP</p> <p>7 1201 Third Avenue, Suite 3200</p> <p>8 Seattle, Washington 98101-3052</p> <p>9 (206)623-1900</p> <p>10 wsmart@kellerrohrback.com</p> <p>11 ibirk@kellerrohrback.com</p> <p>12</p> <p>13 FOR THE PLAINTIFFS:</p> <p>14 JEFFREY I. TILDEN</p> <p>15 MARK A. WILNER</p> <p>16 Gordon Tilden Thomas & Cordell LLP</p> <p>17 1001 Fourth Avenue, Suite 4000</p> <p>18 Seattle, Washington 98154-1007</p> <p>19 (206)467-6477</p> <p>20 jtilden@gordontilden.com</p> <p>21 mwilner@gordontilden.com</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">I N D E X</p> <p>1</p> <p>2</p> <p>3 EXAMINATION BY: PAGE</p> <p>4 MR. SMART 6, 119</p> <p>5 MR. CASPER 113</p> <p>6</p> <p>7</p> <p>8 EXHIBITS FOR IDENTIFICATION PAGE</p> <p>9 5 Microsoft Corporation Form 10-K, Commission 75</p> <p>10 File Number 0-14278</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 FOR THE DEFENDANT:</p> <p>2 CHARLES B. CASPER</p> <p>3 Montgomery, McCracken, Walker & Rhoads, LLP</p> <p>4 123 South Broad Street</p> <p>5 Philadelphia, Pennsylvania 19109</p> <p>6 (215)772-7223</p> <p>7 ccasper@mmwr.com</p> <p>8</p> <p>9 FOR THE DEFENDANT AND THE WITNESS:</p> <p>10 LINDA K. NORMAN</p> <p>11 Microsoft Corporation</p> <p>12 One Microsoft Way</p> <p>13 Redmond, Washington 98052-6399</p> <p>14 (425)703-2780</p> <p>15 lnorman@microsoft.com</p> <p>16 ALSO PRESENT:</p> <p>17 TANIA GRANT, Video Specialist, Yamaguchi, Oblen,</p> <p>18 Manglo, LLC</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 SEATTLE, WASHINGTON; AUGUST 29, 2007</p> <p>2 1:52 P.M.</p> <p>3 --oOo--</p> <p>4</p> <p>5 THE VIDEOGRAPHER: Good afternoon. We are now</p> <p>6 on the record.</p> <p>7 Today's date is August 29th, 2007, and the</p> <p>8 time is now 1:52 p.m. The location of today's</p> <p>9 deposition is Gordon Murray Tilden - Gordon, Tilden,</p> <p>10 Thomas, Cordell, 1001 Fourth Avenue, Suite 4000,</p> <p>11 Seattle, Washington 98154.</p> <p>12 My name is Tania Grant, video specialist</p> <p>13 representing Yamaguchi, Oblen & Manglo in Seattle,</p> <p>14 Washington. Cause number is C07-0475 MJP, entitled</p> <p>15 Dianne L. Kelley v Microsoft Corporation.</p> <p>16 This is a 30(b)(6) deposition of Microsoft</p> <p>17 Corporation's representative Christine Mullaney Sundlie.</p> <p>18 The video deposition was requested by the</p> <p>19 plaintiffs' counsel with Keller Rohrback.</p> <p>20 Would counsel and all present please identify</p> <p>21 yourselves and state whom you represent.</p> <p>22 MR. SMART: This is Will Smart, along with Ian</p> <p>23 Birk from Keller Rohrback. We represent the plaintiffs,</p> <p>24 along with co-counsel Mark Wilner and Jeff Tilden of</p> <p>25 Gordon, Thomas, Tilden.</p>

2 (Pages 2 to 5)

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<p style="text-align: right;">Page 26</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 REDACTED PURSUANT TO DKT. NO. 78 AND 13 MICROSOFT'S CONFIDENTIALITY DESIGNATION 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 28</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 REDACTED PURSUANT TO DKT. NO. 78 AND 13 MICROSOFT'S CONFIDENTIALITY DESIGNATION 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 27</p> <p>1 2 3 4 5 6 7 8 9 10 11 REDACTED PURSUANT TO DKT. NO. 78 AND 12 MICROSOFT'S CONFIDENTIALITY DESIGNATION 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 29</p> <p>1 2 3 4 5 6 7 8 9 10 11 REDACTED PURSUANT TO DKT. NO. 78 AND 12 MICROSOFT'S CONFIDENTIALITY DESIGNATION 13 14 15 16 17 18 19 20 21 22 Q. (BY MR. SMART:) Am I right? 23 MR. CASPER: I'm going to object. It 24 misstates the witness's testimony. You're also ignoring 25 her statement earlier that she is not an expert in this</p>

8 (Pages 26 to 29)

C. MULLANEY-SUNDLIE CONFIDENTIAL; August 29, 2007

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1 area, and this is beyond scope of the 30(b)(6)
2 deposition — designation.

3 MR. SMART: Well, actually, it's not, because
4 I'm trying to find out exactly what records there are
5 from which one can determine the number of sales and the
6 people who bought them of various Microsoft products
7 under the Windows Vista Capable program.

8 MR. CASPER: She already answered that
9 question.

10 MR. SMART: Not fully, but, anyway.

11 Q. (BY MR. SMART:) You can go ahead, ma'am.
12 Would you like the question read back so it's fairly in
13 front of you?

14 A. Yes, please.

15 (Record read as follows:

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21 MICROSOFT'S CONFIDENTIALITY DESIGNATION

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14 MICROSOFT'S CONFIDENTIALITY DESIGNATION

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9 (Pages 30 to 33)

Yamaguchi Oblen Manglo, LLC * www.yomreporting.com

520 Pike Street, Suite 1320, Seattle, Washington 98101 * (206) 622-6875 * 1 (800) 831-6973

Exhibit 4 Page 8

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Page 54

1 [REDACTED]

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13 MICROSOFT'S CONFIDENTIALITY DESIGNATION

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21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 Q. Are there any documents that describe, either

25 in summary or detailed form, the success of the Windows

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1 Vista Capable program for selling Windows XP licenses

2 prior to the Vista launch?

3 MR. CASPER: Objection: Beyond the scope of

4 the 30(b)(6) designation.

5 A. And the answer is I don't know.

6 (Mr. Tilden arrives.)

7 Q. (BY MR. SMART:) Okay. And did you look for

8 any?

9 A. No.

10 Q. What documents are there at Microsoft that

11 identify the number of XP licenses sold during the

12 Windows Vista Capable program period?

13 MR. CASPER: Objection: Asked and answered.

14 A. I already stated that the Microsoft sales

15 database contains that information.

16 Q. (BY MR. SMART:) Okay. But you have to query

17 it; is that right?

18 A. Yes, that's correct.

19 Q. Are there any reports that were sent to any

20 OEMs or any executives that compiled the numbers for

21 sales of XP licenses during that time period?

22 MR. CASPER: Objection: Beyond the scope of

23 the 30(b)(6) designation.

24 A. Given that we're a public company and we're

25 required to financially report our data in ways that are

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1 required by the government, I am sure that our

2 executives have some report that they look at that

3 identifies sales information to them. Whether it's

4 specific to the number and quantity of licenses sold by

5 product, I'm not certain.

6 Q. (BY MR. SMART:) Okay. So, what documents

7 exist at Microsoft that identify how many XP Home

8 licenses were sold during that time period?

9 MR. CASPER: Objection: Beyond the scope of

10 the 30(b)(6) designation.

11 A. I don't know.

12 Q. (BY MR. SMART:) Does the Microsoft database

13 contain that information?

14 A. Yes.

15 Q. Okay. And does the Microsoft database

16 information also contain the number of Express Upgrade

17 licenses that were activated after Windows Vista became

18 available?

19 A. No.

20 Q. Why not?

21 A. Because the activation database is separate

22 from the sales database, because there are two separate

23 processes as I described earlier.

24 Q. Okay. So, there's a separate database that

25 you go to to look for activations?

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1 A. There is; however, I want to be clear, we

2 would not necessarily — I'd have — we'd have to find

3 out, but we would not necessarily be able to identify

4 activations of Express Upgrade product versus the

5 standard product because there is technically no

6 difference in the software itself.

7 Q. Give me a ballpark as to how many Windows XP

8 Home licenses were sold during the Windows Vista Capable

9 program in the United States.

10 MR. CASPER: Objection: Calling for

11 speculation; lack of foundation; beyond the scope of the

12 30(b)(6) designation.

13 Q. (BY MR. SMART:) You can go ahead and answer,

14 please.

15 A. I don't know.

16 Q. Is it more than a hundred?

17 MR. CASPER: Objection: Calling for

18 speculation.

19 A. We're a large company. I'm sure it's more

20 than a hundred.

21 Q. (BY MR. SMART:) Is it more than a thousand?

22 MR. CASPER: Objection: Calling for

23 speculation.

24 A. I could presume it's more than a thousand.

25 Q. (BY MR. SMART:) Would it be more than a

15 (Pages 54 to 57)

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1 million?

2 MR. CASPER: Objection: Calling for

3 speculation.

4 A. That I really don't know.

5 Q. (BY MR. SMART:) And who would know the answer

6 to that?

7 A. Again, we'd have to look at the Microsoft

8 sales database.

9 Q. And the Microsoft sales database would give

10 you that information?

11 A. Yes.

12 Q. What was the average cost of an XP Home

13 license during the Windows Vista Capable program?

14 MR. CASPER: Objection. No foundation, beyond

15 the scope of the 30(b)(6) designation.

16 A. In terms of cost, I'm not sure whether you're

17 referring to the price that Microsoft charged its

18 retailers or distributors or OEMs or the cost that the

19 customer would be presumed to pay.

20 Q. (BY MR. SMART:) Sure, that's a fair question.

21 What was the cost that Microsoft charged the

22 OEMs?

23 MR. CASPER: Objection: No foundation; beyond

24 the 30(b)(6) designation.

25 A. I don't know.

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1 Q. (BY MR. SMART:) Who would know that?

2 A. People in the OEM decision.

3 Q. Okay. And what was the price that the OEMs

4 charged the consumers?

5 MR. CASPER: Objection: No foundation; beyond

6 the 30(b)(6) designation.

7 A. You'd have to ask the OEMs.

8 Q. (BY MR. SMART:) Okay. And is that because

9 Microsoft has no information concerning what OEMs were

10 charging to consumers for XP Home licenses during the

11 Windows Vista Capable program?

12 MR. CASPER: Same objection.

13 A. To my knowledge, we don't have that

14 information. Additionally, Microsoft does not dictate

15 the price by which the OEMs are required to sell to

16 their end user customers.

17 Q. (BY MR. SMART:) Sure, but isn't it true that

18 Microsoft tracks the charges that OEMs charge consumers

19 so that it can have information as to what a particular

20 product will bring in the marketplace?

21 MR. CASPER: Objection: No foundation; beyond

22 the scope of the 30(b)(6) designation.

23 A. Not to my knowledge.

24 Q. (BY MR. SMART:) Did you ask anybody whether

25 or not they did that?

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1 A. No, I had no reason to ask them.

2 Q. Did you ever look for any records that might

3 exist at Microsoft that tracked the prices charged by

4 OEMs to consumers for Windows XP Home licenses during

5 the Windows Vista Capable program?

6 MR. CASPER: Objection: Misstates the

7 witness's testimony; assumes facts not in evidence.

8 A. No, I did not look for documents that would

9 track that information.

10 Q. (BY MR. SMART:) Wouldn't that be an important

11 thing for the marketing department to know?

12 MR. CASPER: Objection: No foundation; beyond

13 the 30(b)(6) designation; calling for speculation.

14 A. No, it would not be important for the

15 marketing organization to know.

16 Q. (BY MR. SMART:) Who is in charge of documents

17 reflecting communications between Microsoft and computer

18 manufacturers regarding the Microsoft Windows Vista

19 Capable sticker program?

20 A. The OEM division would be responsible for

21 those documents.

22 Q. And what documents exist relating to such

23 communications?

24 A. There would be e-mail, there would be

25 presentations and word processing documents.

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1 Q. What is in the presentations?

2 A. Condensed information regarding a given

3 program or a given set of objectives or information that

4 we needed to provide to the OEMs.

5 Q. And where are those documents located?

6 A. They would -- If it's e-mail, it would be

7 located in individuals' mailboxes.

8 Q. And have you looked for any such documents

9 prior to your deposition here today?

10 A. No.

11 Q. Do you know of anybody at Microsoft who has?

12 A. I don't -- I'm not aware of any, no.

13 Q. Okay. And what presentations exist?

14 A. There would be a presentation regarding the --

15 Well, actually, could you be more specific?

16 Q. Yeah, how many presentations did Microsoft

17 create for its OEMs regarding the Microsoft Windows

18 Vista Capable sticker program or logo program?

19 A. One.

20 Q. There's only one presentation?

21 A. To my knowledge, yes.

22 Q. Have -- Who did you talk to to determine that

23 there was only one presentation?

24 A. Based on my involvement in the implementation

25 of the program, I am aware of one presentation.

16 (Pages 58 to 61)

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REDACTED PURSUANT TO DKT. NO. 78 AND
MICROSOFT'S CONFIDENTIALITY DESIGNATION

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REDACTED PURSUANT TO DKT. NO. 78 AND
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Q. Okay. Thank you. I don't have any further questions.

MR. CASPER: Thank you very much.

THE VIDEOGRAPHER: Here ends the deposition of Christine Mullaney Sundlie. This is the end of tape two. The time is now 5:15 p.m.

(Deposition adjourned at 5:15 p.m.)

(Signature reserved.)

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CORRECTION & SIGNATURE PAGE

1 RE: DIANNE L. KELLEY, ET AL. V. MICROSOFT CORPORATION
2 WESTERN DISTRICT AT SEATTLE; NO. C07-0475 MJP
3 CHRISTINE MULLANEY SUNDLIE; TAKEN AUGUST 29, 2007

4 Reported by: JULIE R. HEAD, CCR No. 3119

5 I, CHRISTINE MULLANEY SUNDLIE, have read the
6 within transcript taken AUGUST 29, 2007, and the same is
7 true and accurate except for any changes and/or
8 corrections, if any, as follows:
9

10 PAGE/LINE	CORRECTION	REASON
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22 Signed at _____, Washington,
23 on this date: _____
24

25 CHRISTINE MULLANEY SUNDLIE

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REPORTER'S CERTIFICATE

1 I, JULIE R. HEAD, the undersigned Certified Court
2 Reporter and Notary Public, do hereby certify:

3 That the sworn testimony and/or proceedings, a
4 transcript of which is attached, was given before me at
5 the time and place stated therein; that any and/or all
6 witness(es) were by me duly sworn to testify to the
7 truth; that the sworn testimony and/or proceedings were
8 by me stenographically recorded and transcribed under
9 my supervision, to the best of my ability; that the
10 foregoing transcript contains a full, true, and
11 accurate record of all the sworn testimony and/or
12 proceedings given and occurring at the time and place
13 stated in the transcript; that I am in no way related
14 to any party to the matter, nor to any counsel, nor do
15 I have any financial interest in the event of the case.

16 WITNESS MY HAND AND SEAL THIS 31st day of August,
17 2007.
18
19
20
21

22 JULIE R. HEAD, CRR, RPR
23 Certified Court Reporter
24 CCR No. 3119
25 Notary Public in and for the
State of Washington, residing in
Snohomish County. Commission
Expires 8-09-11.

32 (Pages 122 to 125)